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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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 Market Entry and Regulation of)
 Foreign-affiliated Entities)
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IB Docket No.
95-22
RM-8355
RM-8392

To: The Commission

COMMENTS OF ARCH COMMUNICATIONS GROUP

Arch Communications Group ("Arch"), by its attorneys, hereby submits comments in response to the Commission's Notice of Proposed Rulemaking on Market Entry and Regulation of Foreign-affiliated Entities.^{1/} The following is respectfully shown:

I. Statement of Interest

1. Arch provides wireless messaging services, primarily paging, in 17 states. It serves predominately medium sized and small markets with populations ranging from 250,000 to 1 million. Arch also provides nationwide paging services through a

^{1/} In the Matter of Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392, released February 17, 1995, (the "Notice").

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network of affiliate companies. Industry sources estimate that Arch is one of the largest providers of paging services in the United States.

2. As a dynamic market participant, Arch supports the creation of international telecommunications markets and opportunities. To maximize the benefits and opportunities in these new markets for U.S. providers and consumers, Arch recognizes the importance of establishing meaningful and fair standards of access and competition in both national and international communication markets. Accordingly, Arch supports the Commission's proposal to add an "effective market access" test to the public interest provisions of the foreign ownership rules in Section 214 and 310 of the Communications Act, as amended ("the Act").

II. Background

3. Section 310(b)(4) of the Communications Act establishes alien ownership and voting limits of 25% for entities, such as Arch, which directly or indirectly control FCC licensees.^{2/} Aliens are permitted to become directors of such companies as long as at least 75% of the directors are U.S. citizens. However, the Commission has discretion to allow alien

^{2/} 47 U.S.C. Section 310(b)(4) (1982).

ownership limits which exceed the established benchmarks upon a determination that such action would be in the public interest. Such determinations are made on a case-by-case basis. The Commission has authorized alien ownership or participation beyond the statutory benchmarks where it has been able to balance the U.S. presence in one or more of the remaining areas relevant to a public interest determination under Section 310(b)(4), such as the numbers of officers, or directors or the level of U.S. ownership.^{3/}

4. The Commission's Notice would modify the standard used for determining which foreign carriers will be allowed to access the U.S. telecommunications markets by evaluating an additional factor, "effective market access", when making the public interest determination under Section 310(b)(4).^{4/} The Commission would define "effective market access" as the ability for U.S. carriers, either currently or in the near future, to provide similar services in the

^{3/} See Teleport Transmission Holdings, Inc. ("Teleport"), 8 FCC Rcd 3063 (Com. Car. Bur. 1993); see also GRC Cablevision, Inc., 47 FCC 2d 467 (1974); IDB Communications Group, Inc., 6 FCC Rcd 4652 (Com. Car. Bur. 1991)

^{4/} The Commission would also consider this factor for a public interest determination when reviewing applications by foreign carriers to provide international facilities based telecommunications services under Section 214 of the Act.

primary markets served by the foreign carrier seeking entry.

**III. The Market Access Test Would
Increase Global Competition and
Help Open Foreign Markets to
U.S. Competition**

5. Arch supports the addition of the effective market access factor to the Section 310(b)(4) public interest consideration since it would increase the opportunity for U.S. industry to compete and provide services globally, and without regard to international boundaries. The establishment of a such global competitive communications systems and markets would maximize competitive opportunity for the U.S. telecommunications industry. In the long run, this increased competition would also provide consumers with decreased prices, increased service quality, increased innovation, and ubiquitous service and coverage.

6. The effective market access test would foster the achievement of these goals. Allowing the Commission to consider the availability of competitive overseas opportunities for U.S. industry when deciding whether to allow foreign companies to participate in the U.S. market would provide a valuable incentive for foreign nations to remove unnecessary regulatory barriers. Any resulting reduction in the number of

foreign market entry barriers would increase the opportunities for U.S. carriers to provide communications services abroad. This process fosters real competition in the global market for communications services and will provide benefits for U.S. providers and consumers.

**IV. The Market Access Test
Will Prevent Anti-Competitive
Conduct in the Provision of
Communications Services In the U.S.**

7. Adoption of the market access test would also ensure that the growing benefits of a global communications market are not rewarded to those who practice or benefit from anticompetitive conduct. Instead, the Commission's proposal would ensure that the U.S. communications industry competes on a "level playing field", at least within our own nation.

8. The U.S. Congress currently is reconsidering the alien ownership restrictions in the telecommunications industry. Yet, despite the obvious consumer benefits and the growing globalization of economies, many other nations maintain strict barriers against foreign entry into their communications markets. Nonetheless, some carriers from these same countries seek entry into lucrative U.S. markets. However, granting such foreign carriers unrestricted entry would place U.S. providers at a competitive

disadvantage in their own markets. For example, foreign carriers that enjoy monopoly status in their protected home markets could leverage this power to create a further market advantage in U.S. markets over U.S. providers. The Commission's proposal would prevent these unfair results since such carriers would likely be screened from entering the U.S. Therefore, the proposed evaluation would ensure that competition in the U.S. markets was real and equitable. As such, the policy would eliminate benefits unfairly conferred on a company because of anticompetitive practices by the company's home nation.

**V. The Market Access Test Should
Apply on a Service-Specific Basis**

9. In adopting the reciprocal market access test, the Commission should accord itself the flexibility to apply the new rule on a service-specific basis where circumstances warrant. Arch would expect most foreign countries to have foreign ownership rules of general applicability to telecommunications facilities. It is possible, however, that different ownership limits might apply to different types of service (e.g. common carrier vs. broadcast services; private vs. commercial services, etc.) The reciprocity rule should be designed to accord the Commission

discretion to deal with such situations on an ad hoc basis.

10. As a provider of narrowband wireless services, Arch is most interested in opportunities in other countries in these particular services. It would offer no comfort to Arch if its ability to participate in narrowband wireless services was restricted in a foreign country, even if other services were opened to foreign ownership. Similarly, Arch would feel disadvantaged if the increased foreign ownership of narrowband wireless stations was allowed in the U.S. while reciprocal opportunities in the foreign country in this particularly dynamic market sector were not available. Consequently, the market access rule should apply on a service-specific basis with respect to any foreign country that has varying foreign ownership thresholds for different types of telecommunications service.

VI. Adoption of the Commission's Proposal Would Not Undermine National Security

11. The precautions of Section 310 were enacted in the 1930's to prevent alien activities against the government during a time of war.^{5/} Today, however, there is less justification for these national

^{5/} See generally S.Rep. No. 781, 73d Cong., 2d Sess. 7 (1934).

security precautions since there are a variety of service providers. As a result, no single licensee, (partially owned by a foreign corporation or not) could take over all the wireless or wireline services in the U.S. during a time of war.^{6/}

12. In addition, Section 310(b)(4) applies to companies which directly or indirectly hold or control a licensee.^{7/} Accordingly, the control of such licensees by aliens is already attenuated. Furthermore, the Commission's effective market access test would favor entry of companies from countries whose markets were open to U.S. industry. Such liberalized policies are most likely to exist among nations which are on friendly terms with the United States. These factors suggest that using the effective market access test as proposed by the Commission would not undermine or compromise national security concerns or leave the nation's communications systems vulnerable to alien control.

13. Arch acknowledges that different types of licenses present potentially different types of security concerns. Nonetheless, application of the

^{6/} See Moving Phones Partnership L.P. v. FCC, 998 F.2d 1051, 1055-56 (D.C. Cir. 1993).

^{7/} Compare with Section 310(b)(3) of the Communications Act which imposes strict ownership limits on aliens who directly hold an interest in a Commission licensee.

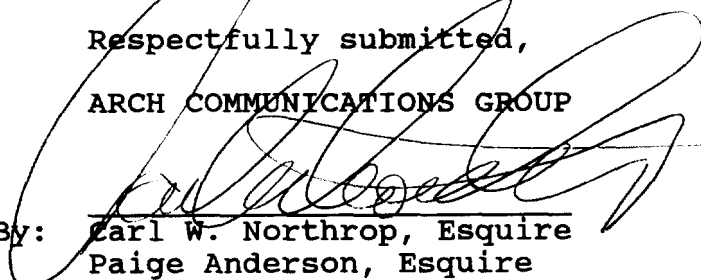
effective market access test is appropriate for common carrier licensees, such as Arch, who exercise little, if any, control over the content of transmissions. However, since the control of broadcast facilities may present separate security concerns than do paging licensees, the Commission may need to distinguish between types of licensees when applying the effective access test. There is a basis for providing such a distinction. The Commission has previously considered in its 310(b)(4) public interest evaluation whether the common carrier at issue is one which exercises control over the content of the transmissions. Since paging licensees exercise no control over the content of the transmissions, and since there are alternate systems of communication, alien ownership which exceeds 25% in this service would present few national security issues.

VII. Conclusion

14. Arch Communications Group supports the Commission's proposal to consider the availability of foreign competitive opportunities for U.S. industry when deciding which foreign companies can compete in the U.S. market. This policy would help foster an international communications market which offers meaningful opportunities to U.S. providers and

consumers. To achieve this, the Commission must open U.S. markets, but do so in a way which fosters full and fair competition among all providers. The Commission's proposal achieves this, while simultaneously providing an incentive for foreign nations to eliminate unnecessary entry barriers abroad. And this liberalization presents minimal national security concerns, especially for providers, such as Arch, which do not control the content of their transmissions. For the foregoing reasons, Arch urges the Commission to adopt the proposed effective market access test to its foreign ownership considerations under Section 310(b)(4) of the Communications Act.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Carolyn M. Floyd, hereby certify that on this 11th day of April, 1995, a copy of the foregoing comments were served by hand-delivery to:

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